



February 26, 1999

## SENATE BILL No. 168

DIGEST OF SB0168 (Updated February 24, 1999 4:59 pm - DI 87)

**Citations Affected:** IC 36-4.

**Synopsis:** Annexation and noncapital services. Allows an annexed area, subject to certain requirements, to retain the fire protection, police protection, or emergency medical services that served the area before the annexation. Allows a municipality to adopt two fiscal plans that establish that the municipality: (1) either will not provide fire protection and police protection or will not provide fire protection, police protection, and emergency medical services to the annexed area; and (2) will provide police protection, fire protection, and emergency services to the annexed area. Provides that if a remonstrance is not filed, the plan providing for less than full implementation of noncapital services will take effect. Provides that the annexed area is not  
(Continued next page)

**Effective:** July 1, 1999.

**Long, Gard, Antich**

January 6, 1999, read first time and referred to Committee on Governmental and Regulatory Affairs.  
February 25, 1999, reported favorably — Do Pass.

SB 168—LS 6491/DI 87+



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responsible for the costs and indebtedness, including pension liability, of the noncapital services not provided by the municipality to the annexed area. Provides that if a remonstrance is filed, the court may consider only the fiscal plan providing for a full implementation of noncapital services. Allows the annexed area to file a petition to retain police protection, fire protection, or emergency medical services, or any combination of these services after an annexation is effective. Requires a petition to retain noncapital services to be signed by 51% of owners of land in the annexed area or the owners of 75% of the total assessed value of the land for property tax purposes. Provides for a hearing within 60 days of the date the petition is filed. Requires the court to find in favor of retention of services if 51% of the owners of land in the annexed area or the owners of 75% of the total assessed value of the land for property tax purposes support retention of the services specified in the petition. Provides that an annexed area that retains fire, police, or emergency medical services is not responsible for costs or indebtedness, including pension liability, from the municipality's provision of the noncapital services specified in the petition. Requires the municipality to amend its fiscal plan to reflect the court's judgment on the petition. Requires the municipality to submit the amended fiscal plan to the court. States that a petition to retain fire, police, or emergency medical services is not an appeal of the annexation. Provides that a person may file a complaint for the failure of a municipality to implement a fiscal plan not later than one year after the termination of all judicial and appellate review of a petition to retain noncapital services. Provides that the one year period for a municipality to provide police protection, fire protection, and emergency medical services begins on: (1) the date the period expires for filing a petition to retain noncapital services if a petition is not filed; or (2) the date of disposition of all judicial and appellate review of a petition to retain noncapital services.

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February 26, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## SENATE BILL No. 168

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 36-4-3-1.1 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 1999]: **Sec. 1.1. As used in this chapter, "emergency medical  
4       services" has the meaning set forth in IC 16-18-2-110.**

5       SECTION 2. IC 36-4-3-7 IS AMENDED TO READ AS FOLLOWS  
6       [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) After an ordinance is adopted  
7       under section 3, 4, or 5 of this chapter, it must be published in the  
8       manner prescribed by IC 5-3-1. Except as provided in subsection (b) or  
9       (c), in the absence of remonstrance and appeal under section 11 or 15.5  
10      of this chapter, the ordinance takes effect at least sixty (60) days after  
11      its publication and upon the filing required by section 22(a) of this  
12      chapter.

13      (b) An ordinance described in subsection (d) or adopted under  
14      section 3, 4, or 5 of this chapter may not take effect during the year  
15      preceding a year in which a federal decennial census is conducted. An

SB 168—LS 6491/DI 87+



ordinance that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 2 of the year in which a federal decennial census is conducted.

(c) Subsections (d) and (e) apply to fire protection districts that are established after June 14, 1987.

(d) Except as provided in ~~subsection~~ **subsections (b) and (f)**, whenever a municipality annexes territory, all or part of which lies within a fire protection district (IC 36-8-11), the annexation ordinance (in the absence of remonstrance and appeal under section 11 or 15.5 of this chapter) takes effect the second January 1 that follows the date the ordinance is adopted and upon the filing required by section 22(a) of this chapter. **If the municipality's written fiscal plan requires the municipality to provide fire protection services**, the municipality shall:

(1) provide fire protection to that territory beginning the date the ordinance is effective; and

(2) send written notice to the fire protection district of the date the municipality will begin to provide fire protection to the annexed territory within ten (10) days of the date the ordinance is adopted.

(e) **This subsection does not apply to an annexed area that retains its fire protection services pursuant to a fiscal plan adopted under section 13.1 of this chapter or amended under section 13.2 of this chapter.** If the fire protection district from which a municipality annexes territory under subsection (d) is indebted or has outstanding unpaid bonds or other obligations at the time the annexation is effective, the municipality is liable for and shall pay that indebtedness in the same ratio as the assessed valuation of the property in the annexed territory (that is part of the fire protection district) bears to the assessed valuation of all property in the fire protection district, as shown by the most recent assessment for taxation before the annexation, unless the assessed property within the municipality is already liable for the indebtedness. The annexing municipality shall pay its indebtedness under this section to the board of fire trustees. If the indebtedness consists of outstanding unpaid bonds or notes of the fire protection district, the payments to the board of fire trustees shall be made as the principal or interest on the bonds or notes becomes due.

(f) **If:**

(1) **a municipality annexes territory in a fire protection district;**

(2) **a municipality adopts a written fiscal plan under section 13.1 of this chapter that allows the annexed territory to retain its fire protection services; and**



1           **(3) no remonstrance is filed in response to the annexation**  
 2           **under section 11 of this chapter;**  
 3           **the annexation ordinance takes effect as set forth in subsection (a).**

4           SECTION 3. IC 36-4-3-10 IS AMENDED TO READ AS  
 5           FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) **Except as**  
 6           **provided in subsection (c)**, if the township from which a municipality  
 7           annexes territory is indebted or has outstanding unpaid bonds or other  
 8           obligations at the time of the annexation, the municipality is liable for  
 9           and shall pay that indebtedness in the same ratio as the assessed  
 10          valuation of the property in the annexed territory bears to the assessed  
 11          valuation of all property in the township, as shown by the most recent  
 12          assessment for taxation before the annexation, unless the assessed  
 13          property within the municipality is already liable for the indebtedness.

14          (b) The annexing municipality shall pay its indebtedness under this  
 15          section to the township executive. If the indebtedness consists of  
 16          outstanding unpaid bonds or notes of the township, the payments to the  
 17          executive shall be made as the principal or interest on the bonds or  
 18          notes becomes due.

19          (c) **A municipality is not liable for and may not pay the**  
 20          **indebtedness of a township related to:**

- 21               (1) **fire protection services;**  
 22               (2) **police protection services;**  
 23               (3) **emergency medical services; or**  
 24               (4) **any combination of subdivisions (1) through (3);**  
 25          **if the service or services are retained by the annexed area.**

26          SECTION 4. IC 36-4-3-13 IS AMENDED TO READ AS  
 27          FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Except as  
 28          provided in subsection (e), at the hearing under section 12 of this  
 29          chapter, the court shall order a proposed annexation to take place if the  
 30          following requirements are met:

- 31               (1) The requirements of either subsection (b) or (c).  
 32               (2) The requirements of subsection (d).  
 33          (b) The requirements of this subsection are met if the evidence  
 34          establishes the following:  
 35               (1) That the territory sought to be annexed is contiguous to the  
 36               municipality.  
 37               (2) One (1) of the following:  
 38                   (A) The resident population density of the territory sought to  
 39                   be annexed is at least three (3) persons per acre.  
 40                   (B) Sixty percent (60%) of the territory is subdivided.  
 41                   (C) The territory is zoned for commercial, business, or  
 42                   industrial uses.



(c) The requirements of this subsection are met if the evidence establishes the following:

(1) That the territory sought to be annexed is contiguous to the municipality as required by section 1.5 of this chapter, except that at least one-fourth (1/4), instead of one-eighth (1/8), of the aggregate external boundaries of the territory sought to be annexed must coincide with the boundaries of the municipality.

(2) That the territory sought to be annexed is needed and can be used by the municipality for its development in the reasonably near future.

(d) The requirements of this subsection are met if the evidence establishes that the municipality has developed a written fiscal plan and has established a definite policy, by resolution of the legislative body, as of the date of passage of the annexation ordinance. The resolution must show the following:

(1) The cost estimates of planned services to be furnished to the territory to be annexed.

(2) The method or methods of financing the planned services.

(3) The plan for the organization and extension of services.

(4) **Except as provided in section 13.3 of this chapter**, that planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation, and that they will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries that have similar topography, patterns of land use, and population density. However, in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the resolution of a city must show that these services will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, or population density.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided to the annexed territory within three (3) years after the effective date of the annexation, in the same manner as those services are provided to areas within the corporate boundaries, that have similar topography, patterns of land use, and population density, and in



a manner consistent with federal, state, and local laws, procedures, and planning criteria. However, in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the resolution of a city must show that these services will be provided to the annexed territory within four (4) years after the effective date of the annexation and in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, or population density.

(6) The plan for hiring the employees of other governmental entities whose jobs will be eliminated by the proposed annexation, although the municipality is not required to hire any employees.

(e) This subsection applies only to cities located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). However, this subsection does not apply if on April 1, 1993, the entire boundary of the territory that is proposed to be annexed was contiguous to territory that was within the boundaries of one (1) or more municipalities. At the hearing under section 12 of this chapter, the court shall do the following:

(1) Consider evidence on the conditions listed in subdivision (2).  
 (2) Order a proposed annexation not to take place if the court finds that all of the following conditions exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

- (i) Police and fire protection.
- (ii) Street and road maintenance.

(B) The annexation will have a significant financial impact on the residents or owners of land.

(C) One (1) of the following opposes the annexation:

- (i) A majority of the owners of land in the territory proposed to be annexed.
- (ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

(f) The federal census data established by IC 1-1-4-5(17) shall be used as evidence of resident population density for purposes of subsection (b)(2)(A), but this evidence may be rebutted by other evidence of population density.



SECTION 5. IC 36-4-3-13.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOW [EFFECTIVE JULY 1, 1999]: Sec. 13.1. (a) This section does not apply to an annexation under section 5 of this chapter.

(b) When a municipality adopts an annexation ordinance, the municipality may adopt a resolution establishing the following two (2) written fiscal plans:

(1) A fiscal plan establishing that the municipality will not provide:

(A) police and fire protection; or

(B) police protection, fire protection, and emergency medical services;

to the annexed area.

(2) A fiscal plan establishing that the municipality will provide police protection, fire protection, and emergency medical services to the annexed area.

(c) The fiscal plans adopted under subsection (b) must establish that the municipality will provide all other noncapital services required of a fiscal plan under section 13 of this chapter.

(d) A fiscal plan adopted under subsection (b)(1) must provide that the annexed territory is not liable for the percentage of the annexing municipality's tax levy attributable to:

(1) the costs of providing the noncapital services that the municipality does not provide to the annexed area under the fiscal plan; and

(2) the indebtedness of the municipality, including pension liability, related to the noncapital services that the municipality does not provide to the annexed area under the fiscal plan.

(e) If two (2) fiscal plans are adopted and a remonstrance with the necessary signatures is not filed under section 11 of this chapter, the fiscal plan adopted under subsection (b)(1) will take effect.

(f) If two (2) fiscal plans are adopted and a remonstrance is filed with the necessary signatures under section 11 of this chapter, the court shall consider only the fiscal plan adopted under subsection (b)(2) at the hearing under section 12 of this chapter. A remonstrance filed in an annexation in which two (2) fiscal plans have been adopted is a remonstrance against the annexation and both of the fiscal plans.

SECTION 6. IC 36-4-3-13.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY





1, 1999]: Sec. 13.2. (a) This section does not apply to an annexation under section 5 of this chapter.

(b) As used in this section, "noncapital services" means:

- (1) police protection;
- (2) fire protection;
- (3) emergency medical services; or
- (4) any combination of subdivisions (1) through (3).

(c) The annexed area may petition the circuit or superior court of the county in which the annexed territory is located to allow the annexed area to retain the noncapital services it received before the annexation. The petition is solely for the purpose of allowing the annexed area to retain its noncapital services. The petition must specify which noncapital services the annexed area seeks to retain.

(d) A petition to retain noncapital services must be filed as follows:

(1) If the annexation ordinance postpones the effective date of the annexation, the petition must be filed not later than ninety (90) days after the effective date of the annexation.

(2) If the annexation ordinance does not postpone the effective date of the annexation, the petition must be filed as follows:

(A) If a remonstrance or an appeal is not filed during the period permitted under this chapter, the petition must be filed not later than ninety (90) days after the date the ordinance is effective under section 7 of this chapter.

(B) If the court's judgment on a remonstrance under section 13 of this chapter or an appeal under section 15.5 of this chapter is not appealed to a higher court, the petition must be filed not later than ninety (90) days after the date of the judgment of the circuit or superior court.

(C) If the court's judgment on a remonstrance under section 13 of this chapter or section 15.5 of this chapter is appealed to a higher court, the petition must be filed not later than ninety (90) days after the date of the disposition of all judicial and appellate review.

(3) If the annexation ordinance annexes territory within a fire protection district as set forth in section 7 of this chapter, the petition must be filed as follows:

(A) If a remonstrance or an appeal is not filed during the period permitted under this chapter, the petition must be filed not later than one hundred fifty (150) days after the ordinance is adopted and upon the filing required by section 22(a) of this chapter.



(B) If the court's judgment on a remonstrance under section 13 of this chapter or an appeal under section 15.5 of this chapter is not appealed to a higher court, the petition must be filed not later than ninety (90) days after the date of the judgment of the circuit or superior court.

(C) If the court's judgment on a remonstrance under section 13 of this chapter or section 15.5 of this chapter is appealed to a higher court, the petition must be filed not later than ninety (90) days after the date of the disposition of all judicial and appellate review.

(e) A petition filed on behalf of an annexed area must be signed by at least:

(1) fifty-one percent (51%) of the owners of land in the annexed area; or

(2) the owners of seventy-five percent (75%) of the total assessed value of the land for property tax purposes.

(f) The court shall schedule a hearing on the petition not later than sixty (60) days after the petition is filed. Notice of the proceedings in the form of a summons shall be served on the annexing municipality. The municipality is the defendant in the cause and shall appear and answer.

(g) If the court determines that a percentage of landowners as set forth in subsection (e) are in favor of retaining the noncapital services specified in the petition, the court shall without delay enter judgment in favor of the petitioners.

(h) An annexed area that retains noncapital services is not liable for the percentage of the municipality's tax levy attributable to the:

(1) costs of providing the noncapital services specified in the petition; or

(2) indebtedness of the municipality, including pension liability, related to the noncapital services specified in the petition.

(i) If the court finds in favor of a petition for retaining noncapital services, the municipality shall amend the annexation fiscal plan to reflect the judgment and submit the amended plan to the court. The municipality may only amend the fiscal plan to eliminate the costs and indebtedness associated with providing noncapital services to the annexed area.

(j) A petition to retain noncapital services under this section is not an appeal from the court's judgment in a hearing under section 12 of this chapter or the court's judgment in a proceeding under section 15.5 of this chapter.



SECTION 7. IC 36-4-3-13.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 13.3. (a) As used in this section "noncapital services" means the following:**

- (1) Police protection.**
- (2) Fire protection.**
- (3) Emergency medical services.**

**(b) The one (1) year period for a municipality to provide noncapital services to an annexed area begins on:**

- (1) the date the period expires for filing a petition to retain noncapital services under section 13.2 of this chapter, if a petition to retain noncapital services is not filed; or**
- (2) the date of disposition of all judicial and appellate review of the petition to retain noncapital services, if a petition to retain noncapital services is filed under section 13.2 of this chapter and the court's judgment is adverse to the petition.**

SECTION 8. IC 36-4-3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 16. (a) Within one (1) year after the expiration of:**

- (1) the one (1) year period for implementation of planned services of a noncapital nature under ~~section~~ sections 13(d)(4) and 13.3 of this chapter;**
- (2) the three (3) year period for the implementation of planned services of a capital improvement nature under section 13(d)(5) of this chapter; or**
- (3) the four (4) year period for the implementation of planned services of a capital improvement nature under section 13(d)(5) of this chapter by a city for annexed territory in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000);**

any person who pays taxes on property located within the annexed territory may file a complaint alleging injury resulting from the failure of the municipality to implement the plan. The complaint must name the municipality as defendant and shall be filed with the circuit or superior court of the county in which the annexed territory is located.

**(b) The court shall hear the case within sixty (60) days without a jury. In order to be granted relief, the plaintiff must establish one (1) of the following:**

- (1) That the municipality has without justification failed to implement the plan required by section 13 of this chapter within the specific time limit for implementation after annexation.**
- (2) That the municipality has not provided police protection, fire**



1 protection, sanitary sewers, and water for human consumption  
 2 within the specific time limit for implementation, unless one (1)  
 3 of these services is being provided by a separate taxing district or  
 4 by a privately owned public utility.

5 (3) That the annexed territory is not receiving governmental and  
 6 proprietary services substantially equivalent in standard and scope  
 7 to the services provided by the municipality to other areas of the  
 8 municipality that have topography, patterns of land use, and  
 9 population density similar to the annexed territory. However, in  
 10 a county having a population of more than two hundred thousand  
 11 (200,000) but less than three hundred thousand (300,000), the  
 12 plaintiff must establish that the annexed territory is not receiving  
 13 governmental and proprietary services substantially equivalent in  
 14 standard and scope to the services provided by the city regardless  
 15 of similar topography, patterns of land use, or population density.

16 (c) The court may:

17 (1) grant an injunction prohibiting the collection of taxes levied  
 18 by the municipality on the plaintiff's property located in the  
 19 annexed territory;

20 (2) award damages to the plaintiff not to exceed one and  
 21 one-fourth (1 1/4) times the taxes collected by the municipality  
 22 for the plaintiff's property located in the annexed territory;

23 (3) order the annexed territory or any part of it to be disannexed  
 24 from the municipality;

25 (4) order the municipality to submit a revised fiscal plan for  
 26 providing the services to the annexed territory within time limits  
 27 set up by the court; or

28 (5) grant any other appropriate relief.

29 (d) A change of venue from the county is not permitted for an action  
 30 brought under this section.

31 (e) If the court finds for the plaintiff, the defendant shall pay all  
 32 court costs and reasonable attorney's fees as approved by the court.

33 (f) The provisions of this chapter that apply to territory disannexed  
 34 by other procedures apply to territory disannexed under this section.



COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred Senate Bill No. 168, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 168 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 8, Nays 0.

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